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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: SEP 13 2006

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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research associate at Case Western Reserve University (CWRU). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner's research specialty involves antiangiogenesis, the prevention of growth of blood vessels. Antiangiogenesis is considered to hold great promise in the area of cancer treatment, because tumors cannot grow to significant size without a blood supply. One means of restricting the growth of new blood vessels is to induce apoptosis (programmed cell death) in the endothelial cells that line the inner surfaces of blood vessels.

The petitioner's initial submission includes nine witness letters. Most of these witnesses are the petitioner's mentors, supervisors, collaborators or associates. We shall consider examples of these letters here. Professor Stanton L. Gerson, chief of Hematology/Oncology at CWRU, describes the petitioner's work at that institution:

> His work is focused on the characterization of an angiogenesis inhibitor and candidate anti-cancer compound, two-chain high molecular weight kininogen (HKa). Currently, his laboratory collaborates with Attenuon, LLC, in San Diego, CA, to try to develop this agent and its analogues as anti-cancer drugs. . . .
>
> HKa is a potent antiangiogenic factor that inhibits growth factor-stimulated proliferation of endothelial cells . . . as well as angiogenesis in animals. [The petitioner] and his colleagues have shown that the antiangiogenic activity of cleaved high molecular weight kininogen is mediated through binding to endothelial cell tropomyosin. [The petitioner's] definitive work in HKa's role as an antiangiogenic factor, and its interaction with tropomyosin, has been

> recently published in the Proceeding[s] of the National Academy of Sciences of the United States of America, a highly prestigious journal.
>
> The importance of [the petitioner's] work defines not only a novel agent, HKa, but a novel cellular binding site, tropomyosin, that can be exploited for development of agents with activity in a wide variety of diseases characterized by excessive angiogenesis, including not just cancer, but rheumatoid arthritis, diabetic retinopathy and inflammatory bowel disease. [The petitioner] is now focusing on characterizing the role of endothelial tropomyosin in angiogenesis, as well as the nature of its interaction with HKa. . . .
>
> His unique discoveries relating to the HKa interactions of HKa with tropomyosin are highly novel, and likely to be clinically important.

[redacted] of the Shanghai Institute of Biological Products was formerly an advanced technical advisor at Jiangsu Kingsley Pharmaceutical during the petitioner's employment there. [redacted] states that the petitioner "and his team devised a well-planned Standard Operating Procedure (SOP) for the manufacture of [recombinant human interleukin-2, a] reliable efficacious agent that boasted high purity, minimal side effects, and notable tumor growth inhibition." The petitioner also "headed the development of injectable azithromycin, a novel, broad-spectrum antibiotic used for the treatment of severe community-acquired pneumonia."

[redacted] who supervised the petitioner's doctoral research at the Shanghai Institute of Immunology, states that the petitioner's "Ph.D. research work focused on the costimulatory molecule CTLA-4 in T cell activation. . . . [The petitioner] played a key role in this project by developing a new strategy for inducing graft tolerance based on blocking the costimulatory signal. This strategy . . . may prove to be a useful therapeutic method in clinical transplantation."

The only initial witness with no evident connection to the petitioner is [redacted] an associate professor at Yale University, who offers a fairly brief description of the petitioner's work at CWRU and states: "This work will undoubtedly advance the delineation of the overall mechanism of HKa and will hopefully lead to a reliable therapeutic agent."

The petitioner submits copies of published articles that he co-authored, as well as printouts from a citation database. The printouts show that three of the petitioner's articles have been cited. Of these three articles, two show only self-citations by the petitioner or his collaborators. The printout for the remaining article shows a total of ten citations, two of which are self-citations, leaving eight independent citations.

The director issued a request for evidence (RFE), stating: "although you have demonstrated success in your field, the documentation falls short of establishing that you have a record of achievement making you so uniquely qualified as to forego the labor certification process in order to allow you to continue your work." The director found that the petitioner's initial submission does not offer a reliable basis for comparison between the petitioner and other qualified workers in the same field. The director requested additional evidence to meet the guidelines set forth in *Matter of New York State Dept. of Transportation.*

In response, the petitioner submits four more witness letters. Three of these witnesses identify themselves as CWRU faculty members, including [redacted] who is on the faculty of CWRU. Prof. [redacted] describes the petitioner's work in technical detail and asserts that the petitioner's "quantification of the HKa binding sequence in tropomyosin provides a basis for the development of novel antiangiogenic pharmaceuticals that mediate their effects through mechanisms similar to those of HKa."

[redacted], vice president and general manager of the biotechnology company AntiCancer Inc., states:

> How the effect of HKa is mediated at the endothelial cell surface poses a fundamentally important question. . . . [The petitioner's] results have almost found the answer to this important question, providing substantial evidence that HKa targets tropomyosin at the endothelial cell surface and through tropomyosin produces some of its effect on blood vessels. His study constitutes the first report providing a mechanism for the previous observation that HKa selectively induces apoptosis of proliferating endothelial cells, but not those cells that already exist. Furthermore, [the petitioner's] results provide a clue for the design of other molecules that can act as antiangiogenic reagents.

The petitioner also submits updated citation printouts, showing that the number of independent citations of the petitioner's most-cited article has increased from eight to eleven. There have also appeared another four independent citations of other articles by the petitioner.

The director denied the petition on October 26, 2005. In the six-page decision, the director acknowledged the evidence the petitioner had submitted, but found that the petitioner has largely focused on a single project that does not "establish a sustained pattern of achievement at this point in the petitioner's career." On appeal, counsel argues that the director failed to apply an "appropriate standard of review," and that the director did not issue "a limited, specific Request for Evidence . . . as articulated in the Service's policy memorandum of February 16, 2005." The policy memorandum in question is a memorandum from William R. Yates, Associate Director of Operations, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)* (February 16, 2005). Counsel's reference to a "limited, specific" RFE derives from the following passage on page 4 of that memorandum:

> A RFE is most appropriate when a particular piece or pieces of necessary evidence are missing, and the highest quality RFE is one that limits the request to the missing evidence. Generally it is unacceptable to issue a RFE for a broad range of evidence when, after review of the record so far, only a small number of types of evidence is still required. "Broad brush" RFEs tend to generate "broad brush" responses (and initial filings) that overburden our customers, over-document the file, and waste examination resources through the review of unnecessary, duplicative, or irrelevant documents. While it is sensible to use well articulated templates that set out an array of common components of RFEs for a particular case type, it is not normally appropriate to "dump" the entire template in a RFE; instead, the record must be examined for what is missing, and a limited, specific RFE should be sent, using the relevant portion from the template. The RFE should set forth what is required in a comprehensible

> manner so that the filer is sufficiently informed of what is required. If a filing is so lacking in initial evidence that a "wholesale" RFE from a template seems appropriate, an adjudicator should confirm this with a supervisor before doing so.
>
> It can be helpful to customers to articulate how and why information already submitted is not sufficient or persuasive on a particular issue. Customers can become confused and frustrated when they receive general requests for information that they believe they have already submitted. The effort it takes to assess existing evidence helps either to spur the customer to provide persuasive evidence, or to form the basis of a convincing denial notice in the absence of such new evidence.

Here is a quotation from the director's RFE in this proceeding:

> The record indicates that you have an MD and an MS and a PhD in Immunology. Your work has been published and cited; you are a member of the American Society of Hematology; you have received honors and awards for your work; and you have clearly won the respect of many members of your field. Of particular note in the documentation is your work in antiangiogenesis inhibitor and HKa research.
>
> However, although you have demonstrated success in your field, the documentation falls short of establishing that you have a record of achievement making you so uniquely qualified as to forego the labor certification process in order to allow you to continue your work. The letters written on your behalf, although they speak of your intelligence, your skill, and your accomplishments, do not adequately establish the overall impact of your work on the field. It is also not clear how your level of accomplishment compares to those of other successful scientists in your field.

Clearly, the RFE in this instance was not a "broad brush" template document that simply listed the statutory and regulatory requirements. We find that the director made a good faith effort "to articulate how and why information already submitted is not sufficient or persuasive on a particular issue." Therefore, we find that the RFE was substantially in conformity with the cited memorandum.

The petitioner submits numerous exhibits on appeal. Almost all of these exhibits are copies of documents and letters submitted previously, resubmitted to illustrate various arguments in the appellate brief.

Counsel states that the petitioner's "record of past accomplishments in the field of hematology research clearly demonstrates a sustained record of achievement in his field." Among these accomplishments, counsel includes the petitioner's attendance at various universities as well as past jobs that the petitioner has held. The director did not dispute the petitioner's academic and professional history, but the petitioner has not established the lasting impact of this early work. The petitioner shows that his photograph was included in an article that appeared in *Yi Xing Ri Bao*, a local newspaper. The record contains no full translation of the article itself. One of the petitioner's former co-workers states that the title of the article is "Technological Star." Counsel states that the article appeared in 2002, but the "2000" and "2" on the masthead appear to

indicate a February 2000 publication date. Counsel does not explain or document the lasting impact of the petitioner's work in China. Simply describing the petitioner's work does not set the petitioner apart from others in his field. Counsel observes that the petitioner participated in the development of drugs or dosage methods that remain in use today, but this is not remarkable in itself, considering that the petitioner was employed by a pharmaceutical manufacturer at the time; such research would arguably constitute a basic job duty rather than a noteworthy contribution.

The petitioner submits another citation printout, showing four new independent citations not shown in the prior submission. The director had not disputed that one of the petitioner's projects has drawn moderate attention, and the director had acknowledged some citations of the petitioner's work. The latest printout shows an incremental increase in the number of citations, but does not refute the director's findings.

Counsel notes that the petitioner "is also the recipient of a competitive two year $84,000 Postdoctoral Fellowship grant from the American Heart Association." Reliance on grant funding appears to be a more or less routine means of paying the salaries and expenses of postdoctoral researchers. Postdoctoral positions, in turn, are generally temporary training positions to prepare researchers for eventual permanent employment.[1]

Counsel then quotes from various witness letters, and states that the petitioner has, in his current work, "made great strides toward the development of a more cost-effective method of using antiangiogenetic proteins in cancer therapy." There is no dispute that the petitioner has engaged, and continues to engage, in worthwhile research. The available evidence, however, does not show that the petitioner has distinguished himself from his peers to an extent that would justify the special benefit of an exemption from a requirement that, by law, normally applies to the immigrant classification that the petitioner has chosen to seek. CIS records show that the petitioner holds an H-1B nonimmigrant visa, permitting him to continue his current short-term research at CWRU. The denial of the immigrant petition does not jeopardize or shorten the validity of the petitioner's current nonimmigrant status, and there is no indication in the record that the petitioner's position at CWRU is intended to be anything more than an inherently temporary postdoctoral training position, regardless of the petitioner's immigration status.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on

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[1] "Biological scientists with a Ph.D. often take temporary postdoctoral research positions that provide specialized research experience." Source: http://www.bls.gov/oco/ocos047.htm#training. The March 31, 1998 *Report and Recommendations* of the Association of American Universities Committee on Postdoctoral Education http://www.aau.edu/reports/PostdocRpt.html defines postdoctoral appointments as temporary. More specific to the proceeding at hand, the *Postdoctoral Scholars Employment Handbook*, issued by CWRU's Office of Postdoctoral Affairs and available at http://pharmacology.case.edu/education/Postdoc%20Scholars%20Handbook.pdf, states on page ii that a postdoctoral "appointment is temporary and postdoctoral scholars are expected to complete their mentored training within 5 years." The same page of the *Handbook* states that a postdoctoral scholar "actively pursues fellowship/grant funding" and "works on scholarly projects funded by grants obtained by others at the University or is funded by department funds," whereas postdoctoral fellows "are not employees of the University and receive their funding from grants they have applied for and obtained from outside sources and not faculty-sponsored research grants." Thus, while grant funding is not the sole source of funding for postdoctoral researchers, it is clearly a routine source thereof. (All named web sites visited September 12, 2006.)

national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.